

CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795 <div>STAFF REPORT</div>	Hearing Date/Agenda Number P.C. 7/23/03 Item: 3.h.
	File Number CP03-008
	Application Type Conditional Use Permit
	Council District 3
	Planning Area Alum Rock
	Assessor's Parcel Number(s) 254-04-080

PROJECT DESCRIPTION	Completed by: John Davidson
Location: north side of Dobbin Drive, approximately 1,000 feet easterly of N. King Road	
Gross Acreage: 5.96	Net Acreage: 5.96 Net Density: N/A
Existing Zoning: LI Light Industrial	Existing Use: Warehouse
Proposed Zoning: LI Light Industrial	Proposed Use: Wireless communications antenna (monopole) & associated equipment

GENERAL PLAN	Completed by: JED
Land Use/Transportation Diagram Designation Light Industrial	Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING	Completed by: JED
North: Single-family detached residential	Unincorporated County
East: Industrial Uses	LI Light Industrial
South: Industrial Uses	LI Light Industrial
West: Industrial Uses	LI Light Industrial

Completed by: JED	
<input type="checkbox"/> Environmental Impact Report found complete <input type="checkbox"/> Negative Declaration circulated on _____ <input type="checkbox"/> Negative Declaration adopted on _____	<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete

FILE HISTORY	Completed by: JED
Annexation Title: Penitencia No. 10	Date: October 9, 1959

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Approval with Conditions <input type="checkbox"/> Denial <input type="checkbox"/> Uphold Director's Decision	Date: _____	Approved by: _____ <input checked="" type="checkbox"/> Action <input type="checkbox"/> Recommendation

OWNER	APPLICANT/DEVELOPER
Rich Brown RC Brown and Associates, LP 16270 Kennedy Road Los Gatos, CA 95032	Shannon Hughes Verizon Wireless 2785 Mitchell Drive Walnut Creek, CA 94598

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: JED

Department of Public Works

None received.

Other Departments and Agencies

None received.

GENERAL CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, Verizon Wireless, is requesting a Conditional Use Permit to construct a 60-foot tall wireless communications monopole on a 5.96 gross acre site in the LI Light Industrial Zoning District. The Zoning Ordinance requires a Conditional Use Permit for new monopole in any zoning district.

The proposed monopole is a slim pole design, with six panel antennas tight-mounted to the top of the pole. The proposed monopole would be located at the interior corner of two buildings, approximately 300 feet away from the existing single-family residences to the north. The proposal also includes the configuration of 300 square feet of existing interior space for telecommunications equipment. Industrial uses surround the property on the east, west, and south sides.

In 1996, San José planning staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennas posed a public health hazard. Staff found that the low-frequency, low energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from antennas.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Light Industrial in that wireless communication antennas are considered to be in conformance

with General Plan Policies provided that the proposal conforms to City Council Policy 6-20, Land Use Policy for Wireless Communication Facilities.

ANALYSIS

The key issues analyzed for the proposed project are conformance with the following: 1) the City of San José Zoning Ordinance, and 2) City Council Policy 6-23 for Wireless Communication Facilities.

Conformance to the Zoning Ordinance

This project conforms to all applicable zoning requirements with regard to placement, height and design. Wireless communications antennas are listed in the Zoning Ordinance as a “conditional uses” in all of the industrial zoning districts. The Zoning Ordinance states that the maximum height of a wireless communication antenna may be increased up to a maximum of sixty feet, in excess of the required maximum height of the zoning district in which it is located, provided that the design of the antenna is a “slim” pole design. In this case, the applicant is proposing a 60-foot high slim pole, where 45 feet would be the normal height limit in the LI Light Industrial Zoning District.

Conformance to City Council Policy 6-23 for Wireless Communications Facilities

The proposed monopole complies with the intent of the City Council policy (attached). The policy allows monopoles on sites with industrial and commercial General Plan designations; however, the policy indicates that visual impacts should be minimized wherever possible, either through the use of stealth antennas or through the provision of additional screening landscaping. In this case, the relatively low height of the building did not allow the applicant to propose a building mounted antenna, which is the preferred design alternative. The fact that the site is industrial in nature prevents the use of a stealth design, such as a clock tower or a bell tower. The location of the monopole, near the building, screens the views of the lower half of the monopole from the south and west directions. In order to screen the monopole from adjacent residential properties, which are located approximately 300 feet north of the proposed monopole location, the applicant has agreed to provide five evergreen trees, spaced 30 feet apart as screening landscaping along the northern property line. As a condition of approval, the applicant will be required to provide revised plans showing the location of the proposed trees, prior to recordation of the permit.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Light Industrial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the LI Light Industrial Zoning District.
3. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the

environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

4. The project proposes the construction of a 60-foot tall slimline monopole on a 5.96 gross acre site.
5. The project includes the use of a 12 x 25 foot portion of the existing building for associated equipment yard near the antenna.
6. The antenna is located in approximately 300 feet to the south of adjacent single-family residences.
7. The project will provide five evergreen trees as screening landscaping at the northern property line to act as screening landscaping between the use and the single-family residences to the north.
8. The proposed project will maintain existing parking.
9. The Zoning Ordinance allows monopoles up to 60 feet in height on Light Industrial zoned properties, provided that they are slim pole designs.
10. The City Council Land Use Policy for Wireless Communications Facilities is applicable to this application.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram designation and relevant urban design policies.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project complies with the applicable criteria of the City Council Land Use Policy for Wireless Communications Facilities, in that the applicant has demonstrated that a monopole is required at this location, that the proposal is for a slimline monopole, and that the monopole will be screened from adjacent residences by additional landscaping.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and

2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Plan Revisions.** Prior to recordation of the permit the applicant shall submit revised plans showing a total of 5 evergreen trees supported by an automatic irrigation system, spaced 30 feet apart (on center), to be planted along the northern property line. The trees shall be a minimum of 15 gallons in size, with the species to be to the satisfaction of the Director of Planning. Any dead trees shall be replaced for the life of this permit.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause

the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Verizon Wireless, King/Berryessa, 1855 Dobbin Drive, San José, CA" dated February 3, 2003, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).
3. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. The applicant must abate any such nuisance immediately upon notice by the City.
4. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
5. **Lighting.** This permit allows no new on-site lighting.
6. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
7. **Utilities.** All new on-site telephone and electrical service facilities shall be placed underground.
8. **Colors and Materials.** All wireless communications building-mounted antennas colors and materials are to be those specified on the approved plan set and shall match the existing structure.
9. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP03-008, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - c. *Construction Conformance.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms to all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.
10. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a

determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

11. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
12. **Co-location.** The applicant and wireless communication facility operator shall facilitate the future co-location of wireless communication antennas on this tower. The applicant and wireless communication facility operator shall notify the Director of Planning of any proposals by other wireless communication providers to collocate antennas on this tower. The notification shall occur within 30 days of receipt of the proposal, and shall include the file number of this Permit.
13. **Equipment Removal.** The applicant shall remove the wireless communications antennas and associated equipment enclosure from the site at such time as the equipment is no longer in use.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.
3. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five years from the date this Permit. At that time, that applicant/owner shall provide information to the City to determine if the wireless communications antenna is still needed, based on improvements in technology or availability of alternative building-mounted opportunities in the vicinity.

Please note that this conditional use permit has been granted for a period of five (5) years only. You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.

4. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning, Building and Code Enforcement. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.

c: Ashraf Rageh, Cal Com Systems, 2001 Omega Road, Suite 201, San Ramon CA 94583

JED